

UNITED STATES DISTRICT COURT  
EASTERN DISTRICT OF MICHIGAN  
SOUTHERN DIVISION

RODNEY MILES,

Plaintiff,

CIVIL ACTION NO. 04-CV-74147-DT

vs.

DISTRICT JUDGE AVERN COHN

AUDBERTO ANTONINI,  
et. al.,

MAGISTRATE JUDGE MONA K. MAJZOUB

Defendants.

ORDER GRANTING IN PART AND DENYING IN PART PLAINTIFF'S MOTION TO  
DIRECT SERVICE AND ORDER TO SHOW CAUSE AS TO WHY DEFENDANTS  
ANTONINI, STEELE, AND RUSS SHOULD NOT BE DISMISSED PURSUANT TO  
FED. R. CIV. P. 4(m)

Plaintiff was allowed to proceed *in forma pauperis* and filed the instant complaint on October 27, 2004 pursuant to 42 U.S.C. § 1983. Count I of Plaintiff's complaint alleges that Defendants violated his Eighth Amendment rights with the unnecessary and wanton infliction of pain while Count II alleges violations of state health and safety codes as well as violations of prison policies and regulations. The case has been referred to the undersigned for all pretrial proceedings. Of the five named Defendants, only Defendant Tylutki was served with a copy of the complaint. On March 31, 2005, the undersigned recommended that all of Plaintiff's claims be dismissed including those against the unserved Defendants. On April 27, 2005, Plaintiff filed a Motion to Direct Service Upon Remaining Defendants which the Court construes as a Motion for Alternate Service.

On June 7, 2005, the Honorable Avern Cohn Adopted in Part and Rejected In Part the undersigned's Report and Recommendation. Specifically, Judge Cohn granted Defendant Tylutki's Motion to Dismiss but allowed Plaintiff's claims against the unserved Defendants to survive. The

remaining unserved Defendants are Medical Service Providers Dr. Audberto Antonini, Steele, Mishra, and Nurse Practitioner Russ.

In Plaintiff's Motion for Alternative Service, he asks that the United States Marshal re-serve Defendants Antonini, Steele, and Russ at the G. Robert Cotton Correctional Facility located at 3510 N. Elm Street, Jackson, Michigan 49201. Because the U.S. Marshal already attempted to serve Defendants Antonini, Steele, and Russ at the G. Robert Cotton Correctional Facility, the Court concludes that a second attempt to serve those individuals at the same address would be futile and Plaintiff has provided no other addresses for these Defendants. Accordingly, Plaintiff's Motion for Alternative Service is denied as to Defendants Antonini, Steele, and Russ.

Pursuant to Fed. R. Civ. P. 4(m), Plaintiff is hereby ordered to show cause as to why his claims against Defendants Antonini, Steele, and Russ should not be dismissed. Specifically, Fed. R. Civ. P. 4(m) provides:

If service of the summons and complaint is not made upon a defendant within 120 days after the filing of the complaint, the court, upon motion or on its own initiative after notice to the plaintiff, shall dismiss the action without prejudice as to that defendant or direct that service be effected within a specified time; provided that if the plaintiff shows good cause for the failure, the court shall extend the time for service for an appropriate period.

The instant complaint was filed on October 27, 2004 such that the 120 day period has lapsed. And although Plaintiff has filed a Motion for Alternative Service, he has failed to provide an alternative means or addresses where Defendants Antonini, Steele, and Russ may be served. Therefore, Plaintiff is hereby ordered to show cause as to why his claims against Defendants Antonini, Steele, and Russ should not be dismissed pursuant to Fed. R. Civ. P. 4(m). Plaintiff must respond to this Order within fifteen (15) days from the date of this Order.

Plaintiff also asks that the U.S. Marshal attempt to serve Defendant Mishra at the Duane Waters Hospital 3857 Cooper Street, Jackson, Michigan 49201. Because the U.S. Marshal has not yet attempted service upon Defendant Mishra at this address, Plaintiff's Motion for Alternate Service is granted as to Mishra only. In a separate Order, the Court is directing the U.S. Marshal to effectuate service upon Defendant Mishra at the alternate address.

**IT IS SO ORDERED.**

Pursuant to Fed. R. Civ. P. 72(a), the parties have a period of ten days from the date of this Order within which to file any written appeal to the District Judge as may be permissible under 28 U.S.C. 636(b)(1).

Dated: July 13, 2005

s/ Mona K. Majzoub  
MONA K. MAJZOUB  
UNITED STATES MAGISTRATE JUDGE

**Proof of Service**

I hereby certify that a copy of this Order was served upon Rodney Miles and Counsel of Record on this date.

Dated: July 13, 2005

s/ Lisa C. Bartlett  
Courtroom Deputy